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ORACLE AMERICA, INC.

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21 ORACLE AMERICA, INC.

22 Plaintiff,

23 v.

24 GOOGLE, INC.

25 Defendant.

26 Case No. CV 10-03561 WHA

27
**ORACLE AMERICA, INC.’S MOTION TO
ADMIT STATEMENT FROM GOOGLE’S
INTERROGATORY RESPONSE**

28
Dept.: Courtroom 8, 19th Floor
Judge: Honorable William H. Alsup

1 Oracle America, Inc. hereby moves to have deemed admitted and read to the jury the
2 following statement from Google's response to one of Oracle's interrogatories: "Google states that
3 any financial data relating to mobile platforms from prior to January 2009 that it may have
4 maintained are inaccurate and unreliable."

5 Google made this statement in response to an interrogatory seeking information regarding
6 the revenues and profits associated with Android during the period January 2005 through
7 December 2011. In its response, Google identified a number of documents reflecting Android
8 revenues and expenses, including substantial expenses purportedly incurred before January 2009.
9 Google designated that response confidential, and Oracle will be prepared to hand up a copy of the
10 response in court.

11 Google's statement is relevant to the jury's assessment of infringer's profits in Phase 3. If
12 Google is permitted to deduct any expenses related to the generation of Android revenues or the
13 use of the infringing material, its deduction should be limited to expenses incurred during periods
14 for which Google has reliable and accurate data. Because the report of Google's expert, Dr. Cox,
15 deducts expenses for prior to January 2009, the jury is entitled to hear that Google admitted during
16 discovery that the calculation of those expenses was inaccurate and unreliable.

17 Google's interrogatory response is admissible against Google under Rule 33(c) of the
18 Federal Rules of Civil Procedures, which provides: "An answer to an interrogatory may be used to
19 the extent allowed by the Federal Rules of Evidence." Written interrogatory responses are party
20 admissions, and therefore admissible under Rule 801(d)(2) of the Federal Rules of Evidence.

21 The Court should hold Google to its interrogatory response and deem the statement set
22 forth above admitted.

23 Dated: May 13, 2012

24 BOIES, SCHILLER & FLEXNER LLP

25 By: /s/ Steven C. Holtzman
Steven C. Holtzman

26 *Attorneys for Plaintiff*
27 ORACLE AMERICA, INC.